

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES RANANDO STEWART, JR.,

Petitioner,

v.

PATRICK COVELLO,

Respondent.

No. 2:25-cv-0819 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Petitioner, a California prisoner, has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner has paid the filing fee.

Petitioner requests that this action be stayed under Rhines v. Weber, 544 U.S. 269 (2005) while he exhausts state court remedies with respect to claims 2, 3 and 4. In order to obtain a stay under Rhines, petitioner must show (1) good cause for his failure to previously exhaust state court remedies, and (2) any unexhausted claim is potentially meritorious. Rhines v. Weber, 544 U.S. at 278. Since petitioner makes no attempt to satisfy the first requirement, he is not entitled to a stay under Rhines.

Alternatively, petitioner asks that this matter be stayed pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003) which does not require a showing of good cause for failure to previously exhaust. Good cause appearing, the court will recommend that this request be granted.

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1 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district
2 court judge to this case.

3 IT IS HEREBY RECOMMENDED that:

4 1. Petitioner's request for a stay under Rhines v. Weber, 544 U.S. 269 (2005) be denied.

5 2. Petitioner's request for a stay under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003) be
6 granted.

7 3. Petitioner's petition for a writ of habeas corpus be dismissed with leave to file an
8 amended petition. In the amended petition, petitioner should omit claims 2, 3 and 4.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
11 after being served with these findings and recommendations, petitioner may file written
12 objections with the court. Such a document should be captioned "Objections to Magistrate
13 Judge's Findings and Recommendations." Petitioner is advised that failure to file objections
14 within the specified time may waive the right to appeal the District Court's order. Martinez v.
15 Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 Dated: March 16, 2025

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18 CAROLYN K. DELANEY
19 UNITED STATES MAGISTRATE JUDGE
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